

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE

FRANCES SPURLOCK AND JEFFREY)
SPURLOCK *et al.*,)
Plaintiffs,)
v.) No. 3:09-CV-00756
DAVID FOX *et al.*,) Judge Nixon
Defendants.)

DEFENDANTS' MOTION TO DISMISS PLAINTIFFS' AMENDED COMPLAINT
[Fed. R. Civ. P. 12(b)(6)]

Plaintiffs claim that the Metropolitan Nashville Board of Education's recent Student Assignment Plan constitutes *de jure* segregation in violation of the Fourteenth Amendment. *See* Complaint (filed Aug. 31, 2009) and First Amendment to Complaint (filed Sep. 4, 2009) (collectively "Compl."). But Plaintiffs fail to allege one of the basic elements of such a claim – they do not allege that the Board's new Student Assignment Plan has an unlawful *segregative effect* or other *discriminatory impact*. Furthermore, plaintiffs cannot cure this fundamental defect by making inapposite arguments about explicit "racial classifications," because plaintiffs' Complaint makes clear that the Student Assignment Plan does not have explicit "racial classifications." To the contrary, the Plan is race-neutral on its face.

Because plaintiffs' Complaint does not allege that the District's Student Assignment Plan actually has *any* unlawful segregative effect, plaintiffs' Section 1983 claim should be dismissed. Moreover, because plaintiffs' federal claim should be dismissed, plaintiffs' claim that they were not provided textbooks in a timely manner, a state law claim, should be dismissed for lack of jurisdiction.

For these reasons, and as discussed in more detail in the accompanying memorandum in support, which is incorporated herein by reference, defendants respectfully request that the Court dismiss plaintiffs' Complaint in its entirety.

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Certificate Of Service

I hereby certify that a copy of the foregoing has been sent via the CM/ECF electronic filing system, on this 8th day of October, 2009 to:

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